

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FREDRICK J. BUSH,

Petitioner,

v.

C.A. No. 04-12122-JLT

DEPARTMENT OF CORRECTION,

Respondent.

ORDER

On October 5, 2004, the Court received a petition for a writ of habeas corpus under Section 2254 from Fredrick Bush, an inmate at the Plymouth County Correctional Facility.

ACCORDINGLY,

(1) The Clerk shall correct the case caption to reflect that the only respondent to this action is Joseph McDonough, the sheriff of Plymouth County. A writ of habeas corpus must be "directed to the person having custody of the person detained." 28 U.S.C. § 2243. Petitioner's legal custodian is the sheriff of Plymouth County, the individual having day-to-day control over the facility in which petitioner is being detained. Vasquez v. Reno, 233 F.3d 688, 694 (1st Cir. 2000), cert. denied, sub nom. Vasquez v. Ashcroft, 122 S. Ct. 43 (2001); see Mass. Gen. Laws ch. 126 § 16 (sheriff shall have custody and control of the jails in his county.. .and shall be responsible for them); AND

(2) Pursuant to Rule 4 of the Rules Governing Section 2254 cases, the Clerk of this Court is hereby ordered to serve a copy of the Petition for a Writ of Habeas Corpus by mailing copies of the same, certified mail, to (1) Joseph McDonough, Sheriff, Plymouth County Correctional Facility, 26 Long Pond Road, Plymouth, MA 02360; AND (2) Cathryn Neaves, Chief, Appellate Division, Attorney General for the Commonwealth of Massachusetts, One Ashburton Place, 18th Floor, Boston, MA 02108-1598.

(3) It is further ordered that Respondent shall, within 20 days of receipt of this Order, file an answer (or other proper responsive pleading) to the Petition for Writ of Habeas Corpus.

(4) This Court further requests Respondent, as part of the return, to file such

documents which reflect on whether Petitioner has exhausted his available state remedies with respect to the matters raised by the Petition.

10/12/04

DATE

/s/ Joseph L. Tauro

UNITED STATES DISTRICT JUDGE